

Atlantic Public Hearing  
December 17, 2008

**Mike Henningsen:** My name is Mike Henningson with Henningson Construction, we have a paving company here in Atlantic, we do state, county work, all over western Iowa and in other states. Just from what I've heard and learned through the associations we deal with, we use limestone rock and sand and gravel and in the making of asphalt and I guess my comment is that I would like to see it not the rules not have the pendulum swing so far one way that simply setting up a new limestone quarry, a new gravel pit where they are discharging water into a stream or a river be so prohibitive that would preclude them from operating that quarry. And I know they're all concerned about the water they put into streams and rivers and don't purposely want to make it worse but if the rules are written properly or the streams are designated such that nothing can be discharged into them, that stops them from operating in a new location. If we had to get material from anywhere in western Iowa where that kind of material for sand, gravel, limestone, that material may come from easily sixty miles away. If there's a fifty thousand ton asphalt project on Interstate 80 and we have to use say thirty thousand tons of limestone and can't use it out of the quarry in Atlantic, we have to go to the quarry in Council Bluffs which has happened, that's a difference of probably easily ten dollars a ton at just hauling so thirty thousand times ten dollars is three hundred thousand dollars in one project in one year in Iowa. It is real money and it does cost the taxpayers, it could cost the taxpayers a considerable amount of money. Thank you.

**Clel Baudler:** I'm Clel Baudler, State representative, House District 58 and my concern is what you're going to require legislators to do, both representatives and senators that go before the rule committee to vote on something that appears to be beyond federal requirements. It looks like you're putting an extra step in there, but my main focus is on your fiscal impact statement dated October 27, on page 10, paragraphs 3 and paragraphs 6, you have no cost estimate as to what this is going to cost Iowans. And you say its impossible and none of these potential benefits has a readily identifiable monetary value and thus will not be estimated in this fiscal impact. Everything we vote on down there, almost everything we vote on there has a fiscal impact. And I think to require representatives to do that through rulemaking committee is a little farfetched. That's my statement.

**Patricia Fuller:** I'm from Council Bluffs, Iowa, and basically I think when we consider cost we also need to consider benefits as you talked about. I'm also a nurse and benefit as far as our health and a pretty good example is mercury contamination in fish and some things are kinda difficult to measure like the dead zone in the gulf. But I think we also need to consider health, we need to consider tourism, recreation, fish and wildlife, and I know that you have brought that to bear. I'm a little bit concerned that the economy and cost always trumps any desire to improve water quality and basically since 1997 the EPA told us that our antidegradation rules were not sufficient so basically up until this time there hasn't been a great deal of restriction on any industry as far as the amount of pollution they could put in. I think that we should have some real teeth in these regulations and I think sometimes we do have to pay for things, whether its increasing taxes or if its increasing how far you have to haul gravel to build a road out of asphalt. I think there's always a cost to any kind of pollution and to think that we can always get by without that or that we can't have outstanding streams because that would somehow impair

economic growth, I think we need to balance it where we are considering both things and I think also if streams are upgraded then I think the existing users need to meet those alternative requirements. And I think it's a cost they should bear. I'm willing to bear my cost as far as taxes, but kind of like it's the same old argument we cannot have a fuel efficient cars because that's going to cost the big three or they're cost the oil producers. Or we can't have regulations on Wall Street because that will cost the economy, well eventually it does cost and I think some things are important just for their existing quality rather than their existing economic benefit to a certain industry.

**Marvin Shuly:** Marvin Shuly, Dallas County farmer by Minburn, which is along a river and a gravel pit, farmed around the gravel pit for about thirty years and swam in the river for a long time. When I was a kid 65 years ago, the neighborhood met at the river to swim, take a Saturday night bath if we baled hay or whatever we did, we ended up at the river. My kids swam in the gravel pit because it was cleaner when they came along in the process there was a packing plant that went in upstream, that had a somewhat effect. Then we got into fertilizers and chemicals and I know this because I'm in agriculture, but your position I think as a farmer I cannot ask you to do what they don't make me do to make the rivers clean. I am beyond reasoning, I'm past salivating, I'm tired of waiting for you guys to clean up the water. The Raccoon River is contaminated, now my grandkids, we go canoeing a lot and I love to swim in it every other year or once a year or whenever, but this certainly, I know times change, I know people change, but I also know that that river has changed. And it's not as good as it was and why should this gentleman from a small town have to have exceptional costs when I as a farmer with a whole bunch of cows can let the cattle go in the middle of the river and crap there, do whatever they want to do. And I know this is another big issue that's bigger and stronger than what we got here, but I just...to get to the point, we do have to have clean water, we have figure out the way to do that and I know what goes on in gravel pits, the operators at our pit are much better today and they were fifty years ago, for watching things for what they're doing. But they're still digging in the pit. So this is just some of my thoughts and my concerns and this was the only meeting I could make so I decided to drive an hour and a half to come over and make a few comments. I really enjoyed this conversation, I think that the legislature has got to come up and face this, it shouldn't be the DNR's fault, it shouldn't be the municipalities or quarries or whatever the legislature's got to treat us all alike. And if you treat us all alike we'll have cleaner water, it'll cost everybody less and it will be fair proposition. Let's try to make that work. I am part of the Board of Iowa Farmer's Union, we're a farm organization and we really are concerned about...I just don't understand why do we allow more pollution in rivers that have waterways if the federal government says that are already polluted. It's just beyond my comprehension.

**Greg Schildberg:** The first part of this just acknowledges these are comments concerning the IDNR's proposal of rulemaking for antidegradation. And the first thing I cite is the code of federal regulations that is causing the need for such ruling. I want to make a statement here that we all want clean water, we all know that we have to do something and we have to pass some kind of antidegradation legislation as the Feds have thrown at us. I just think that we need to do it together and work it out and come out with a collaborative that works for everything. Most of the states around us have opted to establish a three tier approach instead of the four tier approach that we have, in this rulemaking, this proposed rulemaking. I believe that this additional tier is

unwarranted and that Tier being 2.5. It says that in the Iowa Antidegradation Implementation Procedure Document that any person may nominate a surface water to the afforded Tier 2.5 level of protection by filling in a nomination letter to the Department. The Department then may clarify the surface water or classify the surface water as an Outstanding Water based on just one of the listed criteria and shall consider all the factors listed on page 8. I just want you to know that one of the first ones and I don't have the figure in front of me right now, but the first one of those is basically that the water has to flow twelve months out of the year. That is pretty loose as far as criteria goes. I think the criteria needs to be tightened up a little bit more than just having that loose of a description. Included in this nomination and consideration process is at least one public meeting where input is to be collected and made part of the public record. I believe the additional Tier 2 and its implementation procedure is unwarranted because, number one, it's not required by federal law, number two, the people of the state are not given adequate opportunity to be informed of the intended action and ramifications of such a decision. Right now I believe that the notification is just supposed to be according to the procedure as just within the watershed itself and I'm concerned that this is a state issue. These are waters of the state, people of the state need to be informed and there should be some time for them to get that notice. Number three, the economic social impact to not only this generation of residents but those of the future may be unforeseen at this time. I think that speaks for itself. One of the other issues that I didn't bring up is that I would like to throw in here right now is that once a 2.5 has been designated there's nothing in the proposed rulemaking that allows it to be ever taken away. It's infinite the way I understand it. There's nothing in there that says that there can be a review at some future date to straighten the situation out if it's no longer warranted. Four, the decision making process is managed by two pews, the property owners, municipalities, businesses and residents may consequentially be impacted. They need to have a significant voice such as a vote. I think public hearings and just a few people of the DNR sitting in the Water Quality department get to make the decisions of importance and whether or not it's a 2.5 will exist or not and even though they have all those things to look at, the bottom line is that people need to have the ability to vote on it. Number five, water is not the only resources that should be considered, other natural resources should be presented into the decision making process. Economically viable limestone, sand and gravel sources are not just found anywhere. Quarries and sandpit locations are constantly moving under current policy it would be deemed as an expansion. Expansions are not to be allowed under the proposed Tier. Consideration must be given to the future of this valuable resource. Just to explain that a little bit further, quarries usually exist and permits exist on a given property. Over time that resource goes away, it's used in the roads and bridges and the infrastructure of the state. And eventually you're going to have to travel out to a new property, a new property that you had no permit on at that time because you may not have had the rights to that property, you may not have acquired it later on and now you want to get a permit. Well according to the rules the way they're written today and the 2.5 you could not do that, that would be a new permit and I would like to see that where if you were discharging at one spot on one side of a property line and you moved on to the other side of the property line you would still be able to do so, you're not increasing the flow anymore than what you had before and with no antidegradation. Number six, the Tier 2.5 review, page two of this same document prohibits any lowering of water quality. Where is the state's historical documentation of water quality of our given surface water bodies? How can any decision be made without the knowledge of the true character of times impact on the water body under review? I believe the historical data that exists today is almost twenty years old. Now I don't, I heard today you're

going to grant and use numbers directly from the EPA, for your goal criteria and that kind of clears that up to a point. But still, I guess that takes care of it. Number seven, on October 14, 2008, the EPC amended into rulemaking over forty OIW's, this section contradicts the proposed Tier 2.5 policies and procedures of acceptance. How can we, the citizens of the state trust the policies and procedures will be followed? Where were the public hearings? Where are the required nominations? The nominee was supposed to establish a basis for the classification and issue a statement in support, where are the documents? Where is the map? Where is the supporting evidence that the applicable criteria have been met? Where is the relevant water quality data establishing existing water quality? Where is the Iowa DNR review of the six items that they were to consider? While technically the implementation procedures appears to allow the EPC amend the rule as it did on October 14, that action bypasses the DNR's review and assumes the validity of twenty-year old data. I do not wish to award the EPC the authority to override these policies and procedures as proposed. Number eight, how will the state of Iowa manage the fluctuations and concentrations of pollutants of concern when they are naturally occurring? The water cycle is not consistent. Geology and the associated aquifers are unique to each segment of every watershed, the permeability and the resultant flow characteristics of aquifers associated with the water table have a direct impact on the quality of all surface waters. Aquifers normally discharge into a surface water body somewhere, groundwater recharges depending on an infinite set of variables. Storm water runoff has as many, all have chemicals associated with them, how can the state attempt to manage a water body's quality without also monitoring agricultural practices, vegetative cover, construction, land use, wildlife and domestic animal defecation, groundwater impact upstream, geohydrologically, topography and the quality and timing of rain. Number nine, does the DNR have a reasonable estimate of what this rulemaking will cost the citizens of the state, where is the cost benefit figure? The IDNR's fiscal impact statement covering this rulemaking is inconclusive, I quote the overall cost statewide cannot be estimated with any degree of accuracy due to the absence of readily available information to thoroughly research the multitude of variables that will one, affect whether or not treatment improvements will be technically possible and if yes what will happen if they are cost preventative and two what industries may choose not to locate in the watershed or in Iowa due to the whole OIW categorization. Number ten, where are the benefits? Again, quoting the IDNR fiscal impact statement, I quote, none of the potential benefits has a readily identifiable monetary value and thus will not be estimated in this impact statement. Number eleven, the current antidegradation rulemaking fails to balance the desire for improved water quality against the potential cost of the state's economy. I am requesting a moratorium on 2.5 or 3 designations until such time that the state comes forward with an accurate fiscal impact statement. Other concerns of this rulemaking are as follows. One, what is the DNR's definition of an expanded regulated discharge as it is presented in the current draft of the implementation procedures? Two, as a quarry operator our primary impact on Iowa waters is simply moving it from one location to another, because we operate below ground level, both storm and groundwater run into our pits. If we are unable to discharge this water, we cannot mine the rock. We believe there are many instances where other discharges actually benefit stream quality. However, because of antidegradation is based on mass loading versus concentration, a 2.5 designation means we will be unable to discharge one molecule of nitrate even if it is mixed with one million gallons of water. I think we had that discussion just a bit ago. Number three, there is no mention of allowing a regulated activity to relocate within the watershed where the designated water body is to receive a light discharge from a light source. When one is replaced by the other. If there is no

degradation being a pollutant of concern will there be an antidegradation review for the new source? Number four, a real problem with the quality of surface water within the state is not being addressed by this rulemaking. Non-point sources of pollution are by far the greatest contributor to the degradation of the state's water quality. The regulated activities associated with this proposal are carrying the full burden of guaranteeing clean surface water. These business are being treated unfairly as a result. Many may not be allowed to exist here at all, it would be a shame to stagnate and possibly stop economic growth in Iowa. And the last one, the current geomorphology of the state is a direct result of the last seven glacial movements. Most of the state's rivers and streams flow through the resulting regolith examples are dirt, sand, gravel, silt, clay and other glacial tills. Regolith is composed of sediments containing minerals and chemicals. As a stream flow increases due to excessive rainfall or snowmelt, erosion of the riverbed and banks causes the suspension of the materials and the chemicals thus naturally polluting the water. How can the quality of water be numerically determined as proposed by in this rulemaking if the chemical constituent level production? Thank you.

**Joe Pille:** I'm the environmental coordinator for OMG Midwest Public. Throughout Iowa we have approximately one hundred and thirty locations, we deal with sand and gravel and limestone sites. We also produce concrete and asphalt. Just as a little bit of background here, I spent twelve years as a state minerals inspector for the Iowa Department of Natural Resources and another four years with the Iowa Department of Natural Resources as an Underground Storage Tanks Technician. I figuratively speaking sat in Adam's chair, I produced the rules, wrote the rules for these state minerals wall. Very familiar with rules, they mainly have changed the process a little bit since I did that, but that aside, there's a few things about these rules that give me some cause for concern and pause. One of the things and this was brought up tonight is the staff or who determines the importance for accommodating a new or revised discharge. Apparently that's spelled out in the Iowa Antidegradation Implementation procedures, the anti-implementation procedure document is not part of the rules. It is incorporated by reference and therefore it's not subject to the same procedures as a normal rule would be. That to me means that we could agree to these rules, everybody could pass the current rules with flying colors without any flying colors and yet somebody could go in and change that procedure and all of a sudden that makes it a whole different ball game. So that causes some concern on my part. One of the other concerns I have is pollutants of concern. Granted you acknowledged that Total Dissolved Solids would be one of the pollutants of concern that apparently is on its way out, although it sounds like it will be replaced with chloride and sulfate. A pollutant of concern is going to vary from location to location and there could be a pollutant of concern even if there are no established limits for that pollutant if I understand what you're saying. The example was nutrients, so we may have a situation where something that we didn't create, the water that we're moving from point A to point B could be subject to a pollutant of concern that there's no limit for. I think these rules need to be typed up a little bit, I think if we're gonna adopt something called an antidegradation implementation procedure we should do it as part of the rules and everything should be spelled out very clearly, exactly what these rules are meant to be. To refer to consultants and how the cost for consultants might increase a little bit, well we don't use consultants, we do because our process is fairly simple, moving water from point A to point B, we generally do everything in house. And if we have to hire consultants, that's just another added cost, granted some people don't believe that cost should be an issue but if it's cost for aggregate or concrete or limestone or asphalt, everybody pays that cost, we all use that

limestone, we all use that concrete. It's in everything around us. I don't personally want to go back to stick huts. I think that's pretty much it. Other than that, I think Greg covered mostly what I was going to comment on. So the last thing I want to do is applaud our farmer friend Marvin for his comments. I don't think I've ever heard an individual recommend regulation of his livelihood but I think he deserves a round of applause for that one. And with that I'll thank you and close.

**Frank Spillers:** My name is Frank Spillers. I'm a consultant for an economic development organization here in Cass County representing six small counties. My concern here is notification of this public hearing and the rules that are going on that not a lot of my communities know about some of the impacts that this would adhere to. Or not a lot of the business that some of the impacts would impact them, they don't know about it. A couple of things, one this is around Christmas time I came by the Catholic Church and it's full. Meaning a lot of the people that would want to...it's Wednesday in rural Iowa, Wednesday night in rural Iowa schools don't have activities because churches go on. This should be something recognized by the Department and by other state agencies when they go out and about doing some public hearings for public comments that not all public can make it. The other one is that I did do some checking, I found out about this public hearing about ten minutes before it was supposed to start and just by happenstance that I ran into a person that told me about it. So I came to at least get some information for some of the communities that I represent that I can take back. So I would just like to encourage that I know that you can input until the end of January but if all the information is not out there about what impact this is going to have on some of the small towns and I concur with him, these small towns are struggling with their tax base and what we tell DNR the more cumbersome the regulations that city councils have to come up with more tax dollars in their already tight budgets, it's hard economic times, the state has to wrestle with a six hundred billion dollar deficit now, I know some cities that are wrestling with their deficits now and though cost should not be a factor, safety should be our utmost to protect our citizens I understand that. But also we have an obligation for fiscal protection of our citizens too to not overtax and not overburden them into some things that they would not know about that would blindside them. Thank you.